IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
December 3, 2007 Session

# BILL F. GRINDSTAFF, ET AL. v. JOHN P. BOWMAN, ET AL.

**Appeal from the Circuit Court for Blount County**
**No. L-14047 W. Dale Young, Judge**

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**No. E2007-00135-COA-R3-CV - FILED MAY 29, 2008**

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This litigation arises out of a collision between a vehicle operated by the plaintiff Bill F. Grindstaff and one driven by the defendant John P. Bowman. Mr. Grindstaff and his wife, the plaintiff Connie Grindstaff, timely filed suit against the defendant Bowman. Some 28 months after the accident, the plaintiffs sought to amend their complaint to add Hardee's Food Systems, Inc. – the employer of the defendant Bowman – as an additional party defendant. After an order was entered allowing the amendment, Hardee's filed a motion for summary judgment predicated upon the bar of the one-year statute of limitations. The trial court granted the motion. The plaintiffs appeal, contending that (1) the discovery rule saves their cause of action against Hardee's and, in any event, (2) the claim was timely filed pursuant to the provisions of Tenn. Code Ann. § 20-1-119(a) (Supp. 2007). We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Joe Costner, Maryville, Tennessee, for the appellants, Bill F. Grindstaff and Connie Grindstaff.

Kenneth W. Ward and Catherine E. Shuck, Knoxville, Tennessee, for the appellee, Hardee's Food Systems, Inc.

## OPINION

### I.

The subject accident occurred in Maryville on Wednesday, February 12, 2003, at 6:46 p.m. Bowman was driving a vehicle – a 1992 Toyota Tercel – owned by and registered to him. The accident was investigated by the Maryville Police Department. The investigating officer prepared and filed a "Tennessee Uniform Traffic Crash Report," a copy of which is in the record.

The plaintiffs, both of whom were allegedly injured in the accident, filed their original complaint on January 20, 2004 – some 342 days after the accident, and 24 days before the statute of limitations would have expired. The sole named defendant was John P. Bowman.

The record reflects essentially no activity in the case for fourteen months. Then, in a letter dated May 20, 2005, Bowman's counsel advised the plaintiffs' attorney that

> [Bowman] tells me that [at] the time of the accident he was employed by Hardee's . . . and ha[d] been asked by his supervisor to go to another Hardee's in the Foothills Mall to pick up some bread. . . . [I]t appears to me that he was on the business of Hardee's when this accident occurred, and I pass this information to you for whatever it may be worth.

On May 23, 2005, Bowman filed his answer. The answer did not mention Hardee's or otherwise allude to the alleged agency relationship mentioned in the letter. On June 16, 2005, the plaintiffs filed a motion to amend their complaint to add Hardee's Food Systems, Inc.,[1] as an additional defendant. An "Amended Agreed Order" was entered on January 5, 2006, allowing the amendment.

On March 20, 2006, Hardee's filed its answer to the amended complaint. As pertinent to the issues on this appeal, Hardee's answer acknowledges that "at the time of the accident . . . Bowman was an employee of this defendant." The answer did not make a specific response to the plaintiffs' allegation that Bowman "was acting in the scope and course of his employment and in the furtherance of the business of the Defendant[] at the time of the accident[.]" However, the answer did contain a general denial as to all allegations not "admitted, denied or explained." Bowman filed an answer to the amended complaint on June 14, 2006, in which he admitted that he was acting within the scope and course of his employment with Hardee's at the time of the accident.

On August 4, 2006, Hardee's filed a motion for summary judgment, asserting that the suit against it was filed outside the period of the one-year statute of limitations. The plaintiffs filed a response on September 8, 2006, in which they argued that the limitations period should be tolled, in accordance with the "discovery rule," because the plaintiffs did not learn of the potential liability of Hardee's until their counsel received the May 20, 2005, letter from Bowman's counsel.

By order entered September 26, 2006, Bowman was allowed to amend his answer to the amended complaint to allege the following:

> In his answer to plaintiffs' amended complaint, Bowman denies that he was negligent and/or that he is liable to the plaintiffs for any damages claimed. Bowman avers that, if it is established that

[1] The motion mentioned other named entities, but an agreed order was eventually entered on March 20, 2006, establishing that Bowman's employer was "Hardee's Food Systems, Inc." The identity of Bowman's employer is not in dispute.

> Bowman is liable to the plaintiff for any part of the damages claimed, defendants, CKE Restaurants, Inc. and Hardee's Food Systems, Inc. d/b/a Hardee's, are jointly and severally liable to plaintiffs for any such damages.

On January 18, 2007, the trial court entered an order granting Hardee's summary judgment and dismissing "all claims of the plaintiffs . . . with prejudice." The order was expressly entered as a final judgment pursuant to the provisions of Tenn. R. Civ. P. 54.02. The order incorporated a short memorandum opinion. As pertinent, the opinion states as follows:

> The Court relies on the authority of **Quality Auto Parts Co., Inc. v. Bluff City Buick Co., Inc. 876 S.W.2nd 818 (Tennessee, 1994)**. This case stands for the proposition that Plaintiffs' reliance on the "discovery rule" is negated by the fact that equitable relief will be granted from the running of the Statute of Limitations when the Plaintiff, in the exercise of reasonable care and due diligence, should know that an **injury** has been sustained. The "discovery rule," in this Court's opinion, and as expressed in **Quality Auto Parts**, does not apply to the tolling of the Statute of Limitations relative to the disclosure of the **parties** involved.

(Bold print in original.) This appeal followed.

II.

Our standard of review of a grant of summary judgment is well-settled. "Our inquiry involves purely a question of law; therefore, we review the record without a presumption of correctness to determine whether the absence of genuine issues of material facts entitle the defendant to judgment as a matter of law." ***Robinson v. Omer***, 952 S.W.2d 423, 426 (Tenn. 1997). "Tenn. R. Civ. P. 56.03 provides that summary judgment is appropriate where: (1) there is no genuine issue with regard to the material facts relevant to the claim or defense contained in the motion, and (2) the moving party is entitled to a judgment as a matter of law on the undisputed facts." ***Bain v. Wells***, 936 S.W.2d 618, 622 (Tenn. 1997) (citations omitted). This determination is based upon "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any." Tenn. R. Civ. P. 56.04. "[S]ummary judgment is not a disfavored procedural shortcut but rather an important vehicle for concluding cases that can and should be resolved on legal issues alone." ***Byrd v. Hall***, 847 S.W.2d 208, 210 (Tenn. 1993). In addressing a motion for summary judgment, "the trial court must take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence . . . [and] if there is a dispute as to any material fact or any doubt as to the conclusions to be drawn from that fact, the motion must be denied." ***Id.*** at 210-11.

Summary judgment in the instant case was granted by the trial court on the ground that Hardee's conclusively established the affirmative defense of untimeliness under the one-year statute of limitations for personal injury actions. Tenn. Code Ann. § 28-3-104(a)(1) (2000). As already

noted, the plaintiffs raise two issues: (1) whether, under the "discovery rule," they filed their cause of action against Hardee's within one year of discovering their claim; and (2) whether the action was timely filed in any event, pursuant to the provisions of Tenn. Code Ann. § 20-1-119, which effectively allows plaintiffs extra time to add a previously unnamed defendant whose fault is implicated by an originally-named defendant. We will address the second issue first, then return to the first issue.

III.

Tenn. Code Ann. § 20-1-119 provides, in pertinent part, as follows:

> (a) In civil actions where comparative fault is or becomes an issue, if a defendant named in an original complaint initiating a suit filed within the applicable statute of limitations, or named in an amended complaint filed within the applicable statute of limitations, alleges *in an answer or amended answer* to the original or amended complaint that *a person not a party to the suit* caused or contributed to the injury or damage for which the plaintiff seeks recovery, and if the plaintiff's cause or causes of action against such person would be barred by any applicable statute of limitations but for the operation of this section, the plaintiff may, within ninety (90) days of the filing of the first answer or first amended answer alleging such person's fault, either:
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> (1) Amend the complaint to add such person as a defendant pursuant to Rule 15 of the Tennessee Rules of Civil Procedure and cause process to be issued for that person; or
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> (2) Institute a separate action against that person by filing a summons and complaint. If the plaintiff elects to proceed under this section by filing a separate action, the complaint so filed shall not be considered an "original complaint initiating the suit" or "an amended complaint" for purposes of this subsection.
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> (b) A cause of action brought within ninety (90) days pursuant to subsection (a) shall not be barred by any statute of limitations.
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> * * *
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> (f) For purposes of this section, "person" means any individual or legal entity.

(Emphasis added.) § 20-1-119 was "enacted in response to [the Supreme] Court's adoption of comparative fault [in ***McIntyre v. Balentine***, 833 S.W.2d 52 (Tenn. 1992)]," and the High Court has held that the statute should be interpreted in a way that is "consistent with notions of fairness and efficiency" that "form the basis of such a system." ***Browder v. Morris***, 975 S.W.2d 308, 312 (Tenn.

1998). Thus, despite the statute's "caused or contributed" language, the Court has held that § 20-1-119 may be used to add a defendant whose liability is premised solely upon vicarious principles. ***Id.*** The Supreme Court has also held that § 20-1-119 applies even where the party defendant does not "allege the fault of the nonparty explicitly or use the words 'comparative fault,' " so long as the "defendant's answer gives a plaintiff notice of the identity of a potential nonparty tortfeasor and alleges facts that reasonably support a conclusion that the nonparty caused or contributed to the plaintiff's injury." ***Austin v. State***, 222 S.W.3d 354, 358 (Tenn. 2007). The statute is implicated regardless of "whether the nonparty is alleged to be partially responsible or totally responsible for the plaintiff's injuries." ***Id.*** at 355.

The plaintiffs acknowledge, as they must, that "Defendant Bowman did not identify Defendant Hardee's as a responsible non-party in his Answer to the Plaintiffs' original Complaint," but rather identified Hardee's in a separate *letter* to the plaintiffs' attorney "at or around the time he filed his Answer." However, the plaintiffs argue that this should be enough to satisfy the requirements of § 20-1-119. To hold otherwise, they contend, "would construe the statute too narrowly and would create an inequitable result." We disagree. Although § 20-1-119 has been interpreted broadly by the Supreme Court, the plaintiffs' suggested construction is a clear deviation from the meaning of the statute's plain language. We cannot endorse such a reading. "If a statute's language is expressed in a manner devoid of ambiguity, courts are not at liberty to depart from the statute's words." ***Freeman v. Marco Transp. Co.***, 27 S.W.3d 909, 911 (Tenn. 2000). By its own terms, § 20-1-119 applies only where "a defendant . . . alleges *in an answer or amended answer* to the original or amended complaint that a person not a party to the suit caused or contributed to the injury or damage for which the plaintiff seeks recovery." (Emphasis added.) This language is clear and unambiguous. A letter from Bowman's attorney to the plaintiffs' attorney, which was not made a part of Bowman's formal answer and only became part of the record when the plaintiffs offered it as an exhibit in opposition to summary judgment, simply is not the same thing as an "answer." If the legislature wishes to expand the scope of § 20-1-119 to include, generally, off-the-record letters or, more specifically, correspondence sent "at or around the time" of the filing of an answer or amended answer, it is, of course, at liberty to do so, but in the meantime we are bound by the current language of the statute. Defendant Bowman's *answer* to the original complaint makes no reference to Hardee's, and therefore it does not satisfy the requirements of § 20-1-119, as it neither "[gave the] plaintiff[s] notice of the identity of a potential nonparty tortfeasor [nor] allege[d] facts that reasonably support a conclusion that the nonparty caused or contributed to the plaintiff's injury." ***Austin***, 222 S.W.3d at 358.

Nor can the plaintiffs rely upon defendant Bowman's first answer to the amended complaint or his subsequent amended answer. Unlike the answer to the original complaint, these later answers *do* "allege[] facts that reasonably support a conclusion that [Hardee's] caused or contributed to the plaintiff's injury" – but by this point, Hardee's was no longer a "potential nonparty tortfeasor." By then, the plaintiffs had added Hardee's to the lawsuit by way of their amended complaint, and thus Hardee's was not a "nonparty" for the purpose of these answers to the amended complaint. Again, the language of § 20-1-119 is explicit and unambiguous: it applies only to answers that point the finger of blame at "a person not a party to the suit." This court made clear in ***McCullough v. Johnson City Emergency Physicians, P.C.***, 106 S.W.3d 36, 46 (Tenn. Ct. App. 2002), that this statutory requirement is to be strictly applied. Again, we cannot deviate from the plain language of

the statute where it is unambiguous, and in any event we see no "equitable" reason to do so. As Hardee's notes in its brief, § 20-1-119 "does not save untimely claims simply because a plaintiff learns, from some source or another, that there may be another potential defendant to the suit." We agree with Hardee's that invoking § 20-1-119 in this case "would not advance the comparative fault system's twin goals of fairness and efficiency."

For the foregoing reasons, Tenn. Code Ann. § 20-1-119 is inapplicable to the facts of the instant case.

IV.

That brings us back to the discovery rule question. As noted earlier, the statute of limitations for personal injury actions is one year from the accrual of the cause of action. Tenn. Code Ann. § 28-3-104(a)(1). "When the cause of action accrues is determined by applying the discovery rule." ***John Kohl & Co. P.C. v. Dearborn & Ewing***, 977 S.W.2d 528, 532 (Tenn. 1998). The discovery rule recognizes the "Hornbook principle that a cause of action in tort does not exist until a judicial remedy is available to the plaintiff; [and] that before a judicial remedy exists, two elements must coalesce, (1) a breach of some legally recognized duty owed by the defendant to the plaintiff; (2) that causes the plaintiff some legally cognizable damage." ***Foster v. Harris***, 633 S.W.2d 304, 305 (Tenn. 1982). Thus, the statute of limitations will not run against a plaintiff "until he discovered, or reasonably should have discovered, (1) the occasion, the manner and means by which a breach of duty occurred that produced his injury; and (2) *the identity of the defendant who breached the duty*." ***Id.*** (emphasis added). The plaintiffs contend that, although the subject car accident took place more than 28 months before they added Hardee's to the lawsuit, they did not learn the "identity of the defendant" in question – namely Hardee's – until their counsel received the May 20, 2005, letter. The plaintiffs added Hardee's to the suit less than a month after receiving this letter.

The trial court appears to have disregarded the discovery rule's applicability to "the identity of the defendant." In its memorandum opinion, the court stated that "[t]he 'discovery rule,' in this Court's opinion, . . . does not apply to . . . the Statute of Limitations relative to the disclosure of the **parties** involved." (Bold print in original.) In support of this statement, the court relied upon the Supreme Court's decision in the case of ***Quality Auto Parts Co., Inc. v. Bluff City Buick Co., Inc.***, 876 S.W.2d 818 (Tenn. 1994). With all due respect, we disagree with the trial court's determination that ***Quality Auto*** stands for such a proposition. The holding of ***Quality Auto*** is tailored specifically to the language of the six-month statute of limitations for slander, and it declares that the discovery rule does not apply *at all* to that particular statute. The case's applicability is limited to slander, a fact the Supreme Court made clear when, in ***Leach v. Taylor***, 124 S.W.3d 87, 90-91 (Tenn. 2004), it declined to extend ***Quality Auto***'s analysis to a claim for intentional infliction of emotional distress, which is governed by the same one-year statute of limitations at issue in the instant case, Tenn. Code Ann. § 28-3-104(a)(1). We therefore reject the trial court's analysis of this issue. However, this does not end our analysis. "[W]e are called upon ultimately to pass upon the correctness of the result reached in the proceeding below, not necessarily the reasoning employed to reach the result." ***Kelly v. Kelly***, 679 S.W.2d 458, 460 (Tenn. Ct. App. 1984). *See also* ***Continental Cas. Co. v. Smith***, 720 S.W.2d 48, 50 (Tenn. 1986) ("[we] will affirm a decree correct in result, but rendered upon different, incomplete, or erroneous grounds"); ***Shutt v. Blount***, 249

S.W.2d 904, 907 (Tenn. 1952) ("if the Trial Judge reached the right result for the wrong reason, there is no reversible error"). Accordingly, we will proceed to consider the other arguments advanced by Hardee's for upholding the trial court's judgment.

Hardee's contends that "the discovery rule should not be applicable to the discovery of a second defendant who is vicariously liable for the actions of the first defendant" because "discovering the identity of the vicariously liable defendant is not necessary to the accrual of the plaintiff's cause of action and does not affect the availability of a judicial remedy." However, existing Tennessee case law makes no such distinction. As noted earlier, ***Foster v. Harris*** states that the statute of limitations will not run against a plaintiff "until he discovered, or reasonably should have discovered . . . the identity of the defendant who breached the duty." 633 S.W.2d at 305. This broad language would include a defendant who is vicariously liable. We have found no Tennessee cases contradicting this rule, and Hardee's offers none.[2] We therefore decline to exempt Hardee's from the discovery rule's applicability simply because its purported liability is vicarious in nature only.

However, Hardee's correctly points out that the discovery rule does not necessarily delay the accrual of a cause of action until a plaintiff *actually knows* the defendant's identity. Rather, as already noted, a cause of action is deemed to have accrued when the plaintiff "discovered, or *reasonably should have discovered*" the critical facts, including the defendant's identity. ***Id.*** (emphasis added). The critical question is when the plaintiffs in this case were "aware of facts sufficient to put a reasonable person on notice" of the existence and identity of Hardee's as a possible second defendant. ***Roe v. Jefferson***, 875 S.W.2d 653, 657 (Tenn. 1994). In other words, the statute of limitations runs from the point at which the plaintiffs are charged with "constructive knowledge" of the fact that Bowman was acting in the scope of his employment with Hardee's at the time of the accident. ***Wilson v. Pickens***, 196 S.W.3d 138, 142 (Tenn. Ct. App. 2005).

Moreover, the plaintiffs cannot simply wait for information regarding a potential defendant to come to them. They have a duty to investigate and discover pertinent facts "through the exercise of reasonable care and due diligence." ***Calaway ex rel. Calaway v. Schucker***, 193 S.W.3d 509, 520 (Tenn. 2005). If their lack of knowledge was due to a lack of due diligence, they will not be allowed to plead ignorance and effectively extend the statute of limitations, by way of the discovery

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[2] The only authorities cited by Hardee's in support of the proposition that the discovery rule should not apply to the discovery of vicariously liable defendants are two Minnesota Court of Appeals cases and a case from a county Superior Court in Maine. These cases are, of course, not binding on us, but more than that, they are not even persuasive. In fact, they are inapposite. The Minnesota cases, ***Sarafolean v. Kauffman***, 547 N.W.2d 417, 422 (Minn. Ct. App. 1996) and ***Lund v. Houghton***, No. C2-96-2587, 1997 WL 435888, at *3 (Minn. Ct. App., filed August 5, 1997), are based on the court's interpretation of a Minnesota sexual abuse statute that contains pertinent language for which there is no analogue in the Tennessee statute at issue here. The Maine case, ***McLean v. Maine Med. Ctr. & Joseph Shubert***, No. CV-84-1265, 1985 Me. Super. LEXIS 144, at *7 (Me. Super. Ct., filed May 30, 1985), simply does not say what Hardee's claims it says, but instead deals with an irrelevant issue: whether, in a case where the statute of limitations is tolled for jurisdictional reasons with regard to the primary defendant, it is therefore necessarily tolled with regard to a vicariously liable defendant as well.

rule, simply because they later discovered "new" information that they "reasonably should have discovered" much earlier.

The record before us, viewed in the light most favorable to the plaintiffs, demonstrates a lack of due diligence by the plaintiffs in investigating their case during the *28 months* between the car accident with Bowman and the discovery that Bowman was allegedly acting within the scope and course of his employment with Hardee's. The plaintiffs' affidavits indicate that Bowman's employment status was not immediately apparent from the circumstances of the accident, and that Bowman did not volunteer any information about this issue while conversing with the plaintiffs after the crash. However, there is no indication that the plaintiffs ever *asked* him whether he was "on the job," either in the accident's immediate aftermath or at any subsequent time. In fact, the facts in this record show no effort by the plaintiffs to *ask* Bowman or his counsel *any* pertinent questions during the nearly 2 1/2 years between the accident and the receipt of the letter implicating Hardee's. In that sense, this case is quite similar to ***Huffman v. Baldwin***, in which this court stated:

> Plaintiff did not become aware of [the second defendant's] involvement . . . until the deposition of [the first defendant, who was the driver in a car accident] . . . , more than two years after the accident. . . . Notably absent from Plaintiff's affidavits is whether Plaintiff, or anyone in her behalf, made any effort to talk with [the first defendant] at any time between the date of the accident and the time of his deposition . . . [V]iewing the evidence in the record before us in the light most favorable to the plaintiff, we believe that it is clear that the plaintiff failed to exercise due diligence by delaying more than two years in taking the deposition of [the first defendant].

No. 03A01-9508-CV-00268, 1996 WL 134949, at *3. We find ***Huffman*** more squarely applicable than ***Hathaway v. Middle Tennessee Anesthesiology, P.C.***, 724 S.W.2d 355, 360 (Tenn. Ct. App. 1986), a medical malpractice case in which the question of the plaintiff's due diligence was held to be a disputed factual issue for the jury to resolve. In ***Hathaway***, the plaintiff was aware of *neither* the existence of a tort *nor* the identity of the tortfeasor during the disputed time period, and the facts were such that a jury could reasonably conclude that a duty to investigate never arose. In the instant case, by contrast, the plaintiffs knew about the tort immediately, yet apparently did essentially nothing to investigate it for 28 months, even while availing themselves of the legal system to file a complaint against the primary tortfeasor. Under those circumstances, we hold that a jury could not reasonably conclude that the plaintiffs exercised due diligence on these facts.

It is apparent that a modicum of investigative effort by the plaintiffs would have revealed Bowman's employment status, and thus the potential liability of Hardee's, in relatively short order after the accident. Yet, even giving the plaintiffs the benefit of all reasonable inferences, as we must, we find no facts from which we can reasonably infer that the plaintiffs undertook to investigate this accident in a diligent fashion. We will not reward the plaintiffs' failure to investigate their case by extending the statute of limitations simply because they subsequently discovered facts that could easily have been unearthed months earlier. To do so would defeat the

purpose of the statute of limitations without advancing the purpose of the discovery rule. Accordingly, we hold that summary judgment was properly granted.

V.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the appellants, Bill F. Grindstaff and Connie Grindstaff. The case is remanded to the trial court for collection of costs assessed there as to the claim against Hardee's, pursuant to applicable law.

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CHARLES D. SUSANO, JR., JUDGE